IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4464 of 2003

With

SPECIAL CIVIL APPLICATION No. 4488 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PIYUSHKUMAR KIRTILAL DAVE - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 1 - Respondent(s)

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Appearance :

MR TR MISHRA for Petitioner(s) : 1,
MR SP HASURKAR for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/12/2005

ORAL JUDGMENT

1.0 In these petitions, the petitioners have

prayed to quash and set aside the impugned show-cause notice at Annexure-A to the petitions and for a further declaration holding that the respondent-Board is legally not entitled to terminate the services of the petitioners on the ground that they have not obtained a trade certificate of Lineman from the Apprentice Board. It is also prayed that the respondent-Board be restrained from terminating or discontinuing the services of the petitioners.

2.0 The short facts as they emerge from the petitions are that the petitioners herein are working on the post of Helper with the respondent-Board. It is the case of the petitioners that they have undergone training for Apprenticeship for the trade of Lineman and accordingly, were appointed as Helper by the respondent-Board. Subsequently, they were confirmed on the said post.

2.1 It is case of the petitioners that the respondent-Board all of a sudden issued show-cause notice at Annexure-A to the petitions on the ground that they have suppressed material information with regard to not having passed the Apprenticeship Examination. It is against the said Show-cause notice

that the petitions have approached this Court.

3.0 Mr. T.R. Mishra learned advocate appearing for the petitioners submitted that the said show-cause notice is issued under misconception inasmuch though the petitioners have undergone training as Lineman, subsequently since they could not pass the requisite apprenticeship examination, the petitioners were absorbed in class-IV posts and later on they were confirmed as Helper wherein the requirement to pass the examination is not there. Mr. Mishra further contended that as per the Circular of the respondent-Board, the apprentices who have successfully completed the training period of three years is not required to pas the said examination. He further submitted that the petitioners were neither appointed nor confirmed as Lineman.

3.1 Mr. Mishra further contended that as per the Circular of respondent-Board, the employee should pass the apprentice examination conducted by the Apprentice Board. However, since large number of persons have been recruited and confirmed on the strength of having completed the apprenticeship training, the Union have raised industrial dispute, which is pending

for conciliation before the Tribunal.

3.2 Mr. Mishra further submitted that the petitioners were appointed as Helper in the pay-scale of Rs.2750-70-70-3100-75-3550-85-4315-100-5215 and subsequently they were confirmed on the said post. He further submitted that the since the petitioners were not qualified as Lineman, they were absorbed as Helper, with a view to see that in absence of the Lineman, the petitioners who were trained as Lineman, can help the respondent-Board to carry out the work of Lineman.

3.3 Mr. Mishra submitted that the petitioners were absorbed as Helper in class-IV posts and they working as such on the said post. He further submitted that though there was no such requirement of said certificate, the respondent-Board issued impugned show-cause notice at annexure-A, on the ground that they have not passed the apprenticeship examination. Mr. Mishra further contended that since the petitioners were appointed as Helper, they were not required to pass the said examination. Apart from that several other similarly situated persons were also absorbed as Helper and they are working in the respondent-Board.

4.0 As against that Mr. Hasurkar learned advocate appearing for respondent no. 1 has contended that the petitioners are working as Lineman and since they have not passed the examination conducted by the Apprenticeship Board, they were required to be removed from the service.

4.1 Mr. Hasurkar has placed reliance on the decision of the Apex Court in the case of U.P. Rajya Vidyut Parishad Apprentice Welfare Association v. State of U.P., reported in A.I.R. 2000 S.C. p.2621, wherein, it has been held that a person who has to go through the examination has only a right to consider for appointment and not as a matter of right.

5.0 I have heard the learned advocates for the respective parties and have gone through the record of the petition. The proposition of law laid down by the Apex Court in the aforesaid decision, is not governed with the present case inasmuch as the petitioners were not appointed on the post of Lineman but they were appointed as Helper in the lower rank. Therefore, if the Recruitment Rules for the said post are not prescribing the requirement of such certificate, the petitioners cannot be relieved or

retrenched on the ground that they have not produced such certificate. On the contrary, in the petitions, the petitioners have specifically contended that at the time when they have been given appointments, they have produced all the requisite certificates and after verifying those certificates, they were appointed as Helper. There is no suppression on the part of the petitioners. Therefore, on the alleged ground of apprehension, they cannot be retrenched.

5.1 Looking the facts and circumstances of the case, in my opinion, the showcause notice is issued under misconception, inasmuch as, the petitioners were not working as Lineman, but they are absorbed as Helper. Therefore, there cannot be retrenchment or termination on the ground of having not fulfilled the condition of passing of the examination and producing the said certificate. In my view, the petitioners cannot be removed or retrenched under the guise of non-fulfillment of the requirement for appointment of Lineman.

6.0 In the premises aforesaid, the petitions are required to be allowed and they are accordingly allowed. The impugned show-cause notice at annexure-A in each of the petitions are quashed and set aside. It

is, however, clarified that the petitioners will not be absorbed as Lineman, but they will be allowed to continue as Helper and as and when they pass such examination, the respondent-Board shall consider their case for appointment as Lineman. Rule is made absolute in each of the petitions to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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